

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JEAN VASADI, DANIELLE MOYER,
JOSH SHEPHERD, LINDSEY
STONEBRAKER, GREG TREACY,
SCOTT TEITSCH, JEFFREY TAYLOR,
ETHAN GALLOWAY, RIDGE BERRY,
JUSTIN JONES, ANNA KING, SCOTT
KING, GORDON FRIEND, LAURA
LUCA, JOSE RODRIGUEZ, SAMUEL
SMITH, AMBER O'CONNOR, JUSTIN
O'CONNOR, LOGAN MCQUILLEN and
CHARLES REGNA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendant.

Civil Action No. 2:21-cv-10238
(WJM)(AME)

**CERTIFICATION OF NICOLE
CANTWELL IN SUPPORT OF
SAMSUNG'S MOTION TO
COMPEL ARBITRATION AND
STAY LITIGATION**

I, Nicole Cantwell, declare as follows:

1. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify completely thereto under oath. I submit this Declaration in support of Defendant Samsung Electronics America, Inc.'s Motion to Compel Arbitration and Stay Litigation.

2. I am a Senior Manager of Digital Content & UX/UI Strategy at Samsung Electronics America, Inc. ("Samsung" or "SEA"). I began employment with Samsung Telecommunications America, Inc. in March of 2013, which

merged into SEA in January 2015, and have worked for SEA from January 2015 to the present.

3. I am familiar with the allegations in Plaintiffs' Amended Complaint ("Complaint") as they relate to Plaintiffs' purchases of Samsung Galaxy S20 smartphones ("Galaxy S20"). Although the specifications for each variant may differ, references in this Certification to "Galaxy S20" smartphones generally include all variants, including the S20 FE, S20, S20+, and S20 Ultra.

4. SEA commercializes, markets, sells, distributes, services and repairs various finished electronic products in the United States, including, but not limited to, the Galaxy S20. As part of my employment, I am familiar with SEA's business practices relating to the sale and distribution of the Galaxy S20, among other products.

5. The following models of the Galaxy S20 launched in the United States in March 2020: GS20, GS20+, GS20 Ultra. The Verizon GS20 FE launched in October 2020.

6. As described below, SEA provided Plaintiffs conspicuous notice, multiple times, that using their devices constituted acceptance of Terms and Conditions, including an Arbitration Agreement.

PACKAGING OUTSIDE OF THE BOX

7. SEA alerted consumers to the Arbitration Agreement through the packaging and documentation that accompanied Galaxy S20 smartphones.

8. All Galaxy S20 smartphones sold in the United States were packaged in a box with external labeling. The labeling informed consumers that the packaging contains Terms and Conditions, and their use and retention of their Galaxy S20 constituted acceptance of “Samsung’s Terms & Conditions including an Arbitration Agreement.” It also provided consumers with the URL where they could find the full terms, including opt-out information, and informed them that the full terms also are available on their devices.

9. In particular, the box for the Galaxy S20 for all carriers and all models contained substantially similar language, in bold:

IMPORTANT INFORMATION

If you open the package, use or retain the device, you accept Samsung’s Terms and Conditions, including an Arbitration Agreement. Full terms, warranty, and opt-out information are at www.samsung.com/us/Legal/Phone-HSGuide/, the enclosed materials & device settings.

10. A screenshot of this language on exterior packaging for the AT&T Samsung Galaxy S20+ 5G is shown below, with the relevant language highlighted by a red box:



11. Some versions of the exterior packaging had minor variations but are materially the same. For example, for certain carriers or models, the box states:

IMPORTANT INFORMATION

If you use or retain the device, you accept Samsung's Terms and Conditions, including an Arbitration Agreement. Full terms, warranty, and opt-out information are at www.samsung.com/us/Legal/Phone-HSGuide/, the enclosed materials & device settings.

This version begins with “[i]f you use or retain the device...,” whereas the other version of the label states “[i]f you open the package, use or retain the device....”

12. Attached at **Exhibit A** are true and correct copies of examples of the electronic rendering of the external labeling for Plaintiffs' Galaxy S20 smartphones.

**ARBITRATION AGREEMENT IS READILY ACCESSIBLE ON
SEA'S WEBSITE**

13. The full Arbitration Agreement is readily accessible on SEA's website, www.samsung.com/us/support/legal/mobile. The URL listed on the Galaxy S20's exterior packaging, www.samsung.com/us/Legal/Phone-HSGuide/, was updated in March 2021 but automatically redirects to this site.

14. Prior to March 2021, the URL on the Galaxy S20 exterior packaging led to a webpage titled “Terms & Conditions / Health & Safety Information.” The opening paragraph stated: “Read this document before operating the mobile device,

accessories, or software (defined collectively and individually as the “Product”) and keep it for future reference. This document contains important Terms and Conditions. Electronic acceptance, opening the Product packaging, use of the Product, or retention of the Product constitutes acceptance of these Terms and Conditions.” The website then provided a list of four agreements, the first of which was the “Arbitration Agreement.” When users clicked on “Arbitration Agreement,” they would be taken straight to the full terms of the Arbitration Agreement. The website also provided an active Table of Contents, which allowed users to click on the Table to be taken directly to specific sections. The Table of Contents listed the Arbitration Agreement in Section 1. After the Table of Contents, the very first section of the website states:

Important Legal Information

READ THIS INFORMATION BEFORE USING YOUR MOBILE DEVICE.

Arbitration Agreement - This Product is subject to a binding arbitration agreement between you and SAMSUNG ELECTRONICS AMERICA, INC. (“Samsung”). You can opt out of the agreement within 30 calendar days of the first consumer purchase by emailing optout@sea.samsung.com or calling 1-800-SAMSUNG (726-7864) and providing the applicable information. For complete terms and conditions that bind you and Samsung, refer to the “Arbitration Agreement” section of this document.

The website then informed users that they could find more legal information in the printed Terms & Conditions included with their smartphone, on the Samsung

website, or stored on their smartphone (and how to find it). A screenshot of the beginning portion of this scrollable website is shown below:

SAMSUNG



TERMS & CONDITIONS / HEALTH & SAFETY INFORMATION

Read this document before operating the mobile device, accessories, or software (defined collectively and individually as the “Product”) and keep it for future reference. This document contains important Terms and Conditions. Electronic acceptance, opening the Product packaging, use of the Product, or retention of the Product constitutes acceptance of these Terms and Conditions.

This information was last updated September 1, 2019.

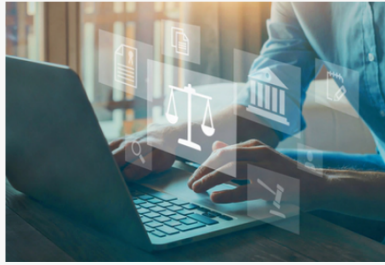
- Arbitration Agreement
- Standard Limited Warranty
- End User License Agreement (EULA)
- Health & Safety Information

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Important Legal Information

15. Attached as **Exhibit B** is a true and correct archival copy of how the website appeared prior to March 2021.

16. After March 2021, the URL takes users to a website where the user can click on a bubble next to “Arbitration Agreement” to access a full, stand-alone Arbitration Agreement, which is prominently displayed as the first item on the site. A screenshot of the beginning portion of the scrollable copy of the Arbitration Agreement is shown below:



Terms and Conditions

This Product is subject to a binding arbitration agreement between you and SAMSUNG ELECTRONICS AMERICA, INC. ("Samsung"). You can opt out of the agreement within 30 calendar days of the first consumer purchase (or use of application) by emailing optout@sea.samsung.com or calling 1-800-SAMSUNG (726-7864) and providing the applicable information. For complete terms and conditions that bind you and Samsung, refer to the "Arbitration Agreement" section of this document.

For specific provisions or legal information relating to your device, please refer to the printed Terms & Conditions included with your device, or visit www.samsung.com and use the model number to locate the product support page. This information was last updated March 22, 2021.

The full Arbitration Agreement, Standard Limited Warranty, End User License Agreement (EULA) and Health & Safety Information are also available on the device, in the Samsung legal section of Settings. The location depends on the device, and is usually in the "About device" or "About phone" or "About tablet" section, for example:

- Settings → About phone or About device or About tablet → Legal information → Samsung legal
- Or, use the Search feature to search for "Legal".

- ☒ Arbitration Agreement
- ☐ Standard Limited Warranty
- ☐ End User License Agreement
- ☐ Health and Safety Information

This is a binding legal agreement ("Agreement") between you (either an individual or entity) and Samsung Electronics America, Inc. ("Samsung"). Electronic acceptance of the agreement, opening the product packaging, use of the product, or continued possession of the product, constitutes acceptance of this agreement, regardless of whether you are the original purchaser, user, or other recipient of the product.

You and Samsung each agree that all disputes between you and Samsung that in any way relate to, or arise from, the standard limited warranty; or the sale, condition, or performance of the product, shall be resolved exclusively through final and binding arbitration, and not by a court or jury. Any such dispute shall not be combined or consolidated with a dispute involving any other person's or entity's product or claim. Specifically, without limitation of the foregoing, you shall not under any circumstances proceed as part of a class action. The arbitration shall be conducted before a single arbitrator, whose award may not exceed, in form or amount, the relief allowed by the applicable law.

The arbitration shall be conducted according to the American Arbitration Association (AAA) Commercial Arbitration Rules applicable to consumer disputes. The AAA Rules are available online at www.adr.org or by calling the AAA at 1-800-778-7879. This Agreement is entered into pursuant to the Federal Arbitration Act. The laws of the State of New York, without reference to its choice of law

17. A true and correct copy of the Arbitration Agreement from the current website is attached as **Exhibit C**.

PAPER COPY OF TERMS AND CONDITIONS INSIDE THE BOX

18. Every box for a Galaxy S20 smartphone also contains a paper copy of the Terms and Conditions. Although there are slight variations in the in-box Terms

and Conditions based on carrier and model, all versions contain identical disclosures regarding the Arbitration Agreement.

19. The in-box Terms and Conditions are a six-page pamphlet, with the exception of AT&T's, which is 14 pages due to the inclusion of the Terms and Conditions in Spanish. The English portion of the AT&T Terms and Conditions contains six pages of text (the seventh page, which separates the English and Spanish Terms and Conditions, is blank). Directly beneath the "Terms and Conditions" title, the cover page contains a block of text prominently notifying consumers in bold font that "[e]lectronic acceptance, opening the packaging, use, or retention of the Product constitutes acceptance of these Terms and Conditions."

20. A screenshot of this text on the cover page of the in-box Terms and Conditions is shown below:

Terms and Conditions

Read this document before operating the mobile device, accessories, or software (defined collectively and individually as the "Product") and keep it for future reference. This document contains important Terms and Conditions. Electronic acceptance, opening the packaging, use, or retention of the Product constitutes acceptance of these Terms and Conditions.

21. The next page of the in-box Terms and Conditions again alerts the user to the Arbitration Agreement:

Important legal information

Arbitration Agreement - This Product is subject to a binding arbitration agreement between you and SAMSUNG ELECTRONICS AMERICA, INC. ("Samsung"). You can opt out of the agreement within 30 calendar days of the first consumer purchase by emailing optout@sea.samsung.com or calling 1-800-SAMSUNG (726-7864) and providing the applicable information.

The full Arbitration Agreement, Standard One-year Limited Warranty, End User License Agreement (EULA), and Health & Safety Information for your device are available online:

- English: www.samsung.com/us/Legal/Phone-HSGuide
- Spanish: www.samsung.com/us/Legal/Phone-HSGuide-SP

This information can also be found on the device in the "About device" or "About phone" or "About tablet" section, for example:

- **Settings > About phone or About device or About tablet > Legal information > Samsung legal**
- Or, Search "Legal"

If your device required Federal Communications Commission (FCC) approval, you can view the FCC certification by opening Settings > About phone or About device or About tablet > Status.

22. Attached at **Exhibit D** are true and correct copies of the in-box Terms & Conditions for Plaintiffs' Galaxy S20 smartphones.

THE ELECTRONIC DEVICE SET-UP PROCESS¹

23. SEA provided additional notice of the Terms and Conditions, including its Arbitration Agreement, during the electronic device set-up process.

24. To activate and use their Galaxy S20s, users were required to complete an initial set-up process on the device. Users could not activate or use their phones until they completed this set-up process.

25. The set-up process was presented to Galaxy S20 users through a series of interactive screens on the devices.

26. For example, a screenshot of the first screen that Verizon users saw after initiating the set-up process is shown below. This screen provides users with “Terms and conditions,” which are hyperlinked and, if clicked, take the user to the full Terms and Conditions, including its Arbitration Agreement. The “Next” button is grayed out and cannot be clicked until the “Terms and conditions” and “Privacy Policy” bubbles are checked off by the user or the user checks off “I have read and agree to all of the above”:

¹ All discussion of the Galaxy S20 set-up process refers to the set-up process on devices purchased in the United States at the time of Plaintiffs’ purchases between March 2020 and April 2021.

Check out some
info to get started

☐ [Terms and conditions](#)

☐ [Privacy Policy](#)

☐ Send [Diagnostic data](#) (optional)

☐ [Information Linking](#) (optional)

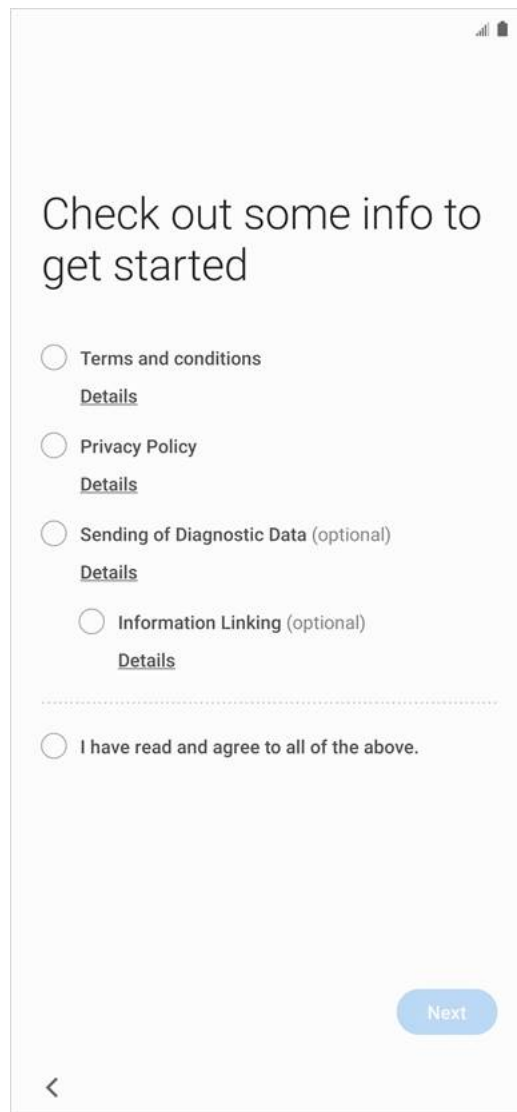
☐ I have read and agree to all of the above.

Next

<

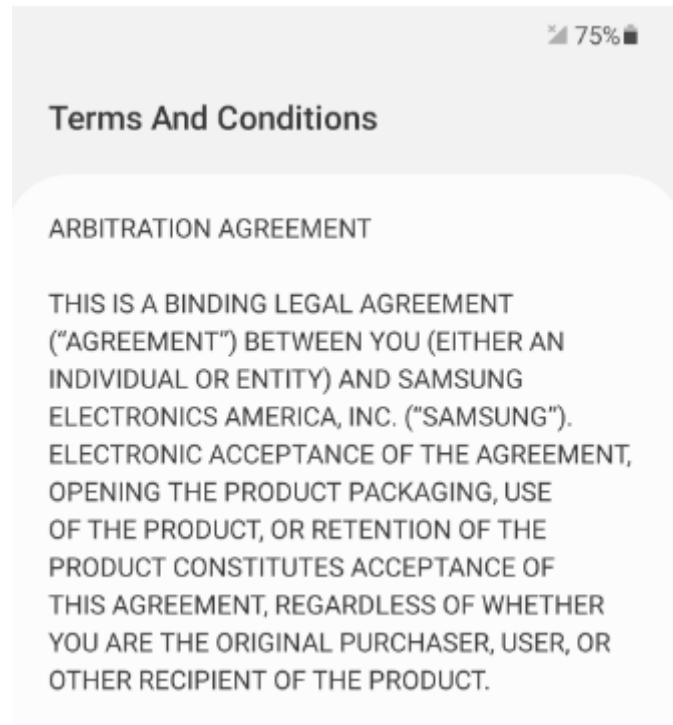
27. Users with other carriers such as Sprint, AT&T, T-Mobile, Xfinity, and Carrier Unlocked have substantially similar experiences. For these users, the word “Details” under “Terms and conditions” is hyperlinked and, if clicked, takes the user to the full Terms and Conditions, including its Arbitration Agreement. The “Next” button is grayed out and cannot be clicked until the “Terms and conditions” and “Privacy Policy” bubbles are checked off by the user or the user checks off “I have read and agree to all of the above.” A screenshot of the first

screen that users with Sprint, AT&T, T-Mobile, Xfinity, and Carrier Unlocked see during the set-up process is shown below:



28. When a user clicks on the hyperlinked “Terms and conditions” or “Details,” they are shown a screen with the scrollable “Terms and Conditions,” which begin with the Arbitration Agreement. A true and correct copy of screenshots of the Arbitration Agreement that users see when they click on the

hyperlinked “Terms and conditions” or the hyperlinked “Details” are attached as **Exhibit E**. A screenshot of these scrollable “Terms and conditions” is shown below:



29. When the user clicks on the bubbles next to “Terms and conditions” and “Privacy Policy” or “I have read and agree to all of the above,” the “Next” button activates, and the user can click it to proceed. Users cannot proceed with setting up their devices unless and until they click the bubble next to the words “Terms and Conditions” or the bubble next to the words “I have read and agree to all of the above,” and then tap the “Next” button on the bottom of the screen.

30. Any time a device is reset, either by the current user or for use by a different or new user, the user must complete the set-up process again.

31. None of the Plaintiffs could have completed the set-up process and used their Galaxy S20 devices until they clicked a bubble next to the “Terms and conditions” or “I have read and agree to all of the above.”

TERMS & CONDITIONS STORED ON THE DEVICE

32. The Terms and Conditions containing the Arbitration Agreement also are accessible on Plaintiffs’ devices at all times.

33. The printed in-box Terms and Conditions informs users that the Arbitration Agreement can be found “on the device in the ‘About device’ or ‘About phone’ or ‘About tablet’ section, for example:

Settings > About phone or About device or About tablet > Legal information > Samsung legal
Or, search “Legal”

THE TERMS OF THE ARBITRATION AGREEMENT

34. The Arbitration Agreement applicable to all consumers who purchased a Galaxy S20 smartphone, regardless of model or carrier, provides:

YOU AND SAMSUNG EACH AGREE THAT ALL DISPUTES BETWEEN YOU AND SAMSUNG RELATING IN ANY WAY TO OR ARISING IN ANY WAY FROM THE STANDARD LIMITED WARRANTY OR THE SALE, CONDITION OR PERFORMANCE OF THE PRODUCT SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY.

35. The Arbitration Agreement prohibits class actions:

ANY SUCH DISPUTE SHALL NOT BE COMBINED OR CONSOLIDATED WITH A DISPUTE INVOLVING ANY OTHER PERSON'S OR ENTITY'S PRODUCT OR CLAIM, AND SPECIFICALLY, WITHOUT LIMITATION OF THE FOREGOING, SHALL NOT UNDER ANY CIRCUMSTANCES PROCEED AS PART OF A CLASS ACTION.

36. The Arbitration Agreement further addresses the rules applicable to an arbitration under the Arbitration Agreement:

The arbitration shall be conducted according to the American Arbitration Association (AAA) Commercial Arbitration Rules applicable to consumer disputes. The AAA Rules are available online at adr.org or by calling the AAA at adr.org or by calling 1-800-778-7879. This Agreement is entered into pursuant to the Federal Arbitration Act.

37. In addition, the Arbitration Agreement provides that *the arbitrator* “shall decide all issues of interpretation and application of this Agreement.”

38. Furthermore, the Arbitration Agreement contains an opt-out provision:

You may opt out of this Agreement by providing notice to Samsung no later than 30 calendar days from the date of the first consumer purchaser's purchase of the Product. To opt out, you must send notice by e-mail to optout@sea.samsung.com, with the subject line: “Arbitration Opt Out.” You must include in the opt-out email (a) your name and address; (b) the date on which the Product was purchased; (c) the Product model name or model number; and (d) the IMEI or MEID or Serial Number, as applicable, if you have it (the IMEI or MEID or Serial Number can be found (i) on the Product box; (ii) on the Product information screen which can be found under “Settings;” (iii) on a label on the back of the Product beneath the battery, if the battery is removable; and (iv) on the outside of the Product if the battery is not removable).

Alternatively, you may opt out by calling 1-800-SAMSUNG (726-7864) no later than 30 calendar days from the date of the first consumer purchaser's purchase of the Product and by providing the same information. These are the only two forms of notice that will be effective to opt out of this Agreement. Opting out of this Agreement will not affect in any way the benefits to which you would otherwise be entitled, including the benefits of the Standard Limited Warranty.

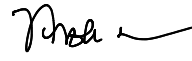
OPT OUTS

39. SEA maintains records for individuals who elect to opt out of the Arbitration Agreement. After receiving the Amended Complaint, SEA searched its records for any opt outs for Plaintiffs. SEA did not locate any opt-out records for any of the Plaintiffs, except for Amber and Justin O'Connor.

40. A true and correct copy of the email sent by Plaintiff Amber O'Connor is attached as **Exhibit F**.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 12, 2021

A handwritten signature in black ink, appearing to read "Nicole Cantwell", is written above a horizontal line.

Nicole Cantwell